

**OFFICE OF ADMINISTRATIVE LAW**

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**DEBRA M. CORNEZ**  
Acting Director

UNDOORSED FILED  
IN THE OFFICE OF

2011 FEB 22 PM 3:26



*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

TO: Secretary of State

FROM: Richard L. Smith, Staff Counsel *RSS*

RE: OAL File No. 2010-0214-03 E; California Emergency Management Agency Section Numbering Error

DATE: February 22, 2011

OAL File No. 2010-0214-03 E  
California Emergency Management Agency  
Date filed with the Secretary of State: February 18, 2011

Attached is an e-mail authorization from the California Emergency Management Agency authorizing this corrective filing with the changes described below for the above-referenced action, which was filed with the Secretary of State on February 18, 2011.

Except for section 2900, the section numbering for all sections filed in the above-referenced action require correction. These corrections will include correction to the "Sections Affected" portion of the Form 400 and to internal cross-references within the regulation text. The following table shows the corrections to the sections numbered from 3000 through 3090.

Filed Section Number	Corrected Section Number
3000	2991
3010	2992
3020	2993
3025	2994
3030	2995
3035	2996
3040	2997
3045	2998
3050	2999
3055	2999.1
3060	2999.2
3070	2999.3
3080	2999.4
3090	2999.5

The Form 400 section numbers and the section numbers in the regulation text will be revised accordingly. Please retain this memo and its attachments with your copy of the above-entitled regulations. Thank you.

Smith, Richard@OAL

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**From:** David Zocchetti [david.zocchetti@calema.ca.gov]  
**Sent:** Tuesday, February 22, 2011 12:30 PM  
**To:** Smith, Richard@OAL  
**Cc:** Catherine Bernstein  
**Subject:** Fw: Cal EMA Emergency Regulations

Mr. Smith - please see below. Thank you.

----- Original Message -----

**From:** Catherine Bernstein  
**To:** 'rsmith@oalmcamgov' <rsmith@oalmcamgov>; David Zocchetti; Nancy Sutton  
**Sent:** Tue Feb 22 12:19:57 2011  
**Subject:** Cal EMA Emergency Regulations

Dear Mr. Smith:

Thank you again for all of your guidance and invaluable assistance. This is to request that you please make the necessary changes to the record to correct our error in numbering the sections. Specifically, this confirms that you have Cal EMA's authorization to: change the sections referenced on the Form 400 to reflect the correct section numbers (2991-2999 and 2999.1-2999.5); renumber the sections in the regulation text that we erroneously submitted as 3000 - 3090; renumber any cross references in the regulation text.

I also appreciate your reassurance that the Emergency Regulations went into effect Friday, February 18th, despite our numbering errors. Thank you again, Catherine Bernstein

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

2011-0214-03E

For use by Office of Administrative Law (OAL) only

2011 FEB 14 PM 3:11

OFFICE OF  
ADMINISTRATIVE LAWRECORDED & FILED  
IN THE OFFICE OF

2011 FEB 18 PM 2:19

  
 CATHY BERNSTEIN  
 SECRETARY OF STATE

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Emergency Management Agency

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Emergency Regulations for PNP Reimbursement		TITLE(S) 19	FIRST SECTION AFFECTED 3000	2. REQUESTED PUBLICATION DATE February 14, 2011
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other		4. AGENCY CONTACT PERSON Catherine Bernstein/L. MacRae		TELEPHONE NUMBER (916) 322-1742
FAX NUMBER (Optional)		NOTICE REGISTER NUMBER		PUBLICATION DATE
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Emergency Regulations - Private Non-Profit Organization Reimbursement	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) N/A
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT <u>2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 2999.1, 2999.2, 2999.3, 2999.4, 3000, 3010, 3020, 3025, 3030, 3035, 3040, 3045, 3050, 3055, 3060, 3070, 3080, 3090</u>
TITLE(S) 19	AMEND <u>2900</u>
	REPEAL <u>per agency RS/OAL 2-18-11</u>

*per agency 2999.5  
Corrective filing  
on 2-22-11. RS/OAL*

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Catherine Bernstein

TELEPHONE NUMBER

(916) 322-1742

FAX NUMBER (Optional)

E-MAIL ADDRESS (Optional)

catherine.bernstein@calema.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

2/14/11

TYPED NAME AND TITLE OF SIGNATORY

Mike Dayton, Acting Secretary Cal EMA

For use by Office of Administrative Law (OAL) only

CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS

Add to Title 19, Division 2, Chapter 6:

Article I. State Public Assistance Program

§ 2900. Definitions

The following definitions apply to this article:

(a)...

Article II. State Private Nonprofit Organizations Assistance Program

§ 2991. ~~§ 2900~~. Definitions

The following definitions apply to this article:

(a) Essential Community Services: Providing governmental type direct services to the community affected by an emergency or disaster, through the distribution of supplies and other disaster or emergency assistance activities. PNP activities are those that provide essential services including but not limited to food, water, and shelter.

(b) Hazard Mitigation: Any cost-effective measure which will reduce the potential for damage to a facility from a future disaster event.

(c) Intermediary Private Nonprofit (Intermediary PNP): Any private not for profit organization as defined in Section ~~2910~~ <sup>2910</sup> that, through written agreement with a local agency, is responsible for the coordination of multiple PNPs performing essential community services within the specific jurisdiction of that local agency.

(d) Local Agency: Any city, city and county, county, county office of education, community college district, school district, or special district.

(e) Private Nonprofit (PNP): Any private not for profit organization that is compliant with 44 CFR Section 206.221(f) having:

- (1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code of 1954,  
or
- (2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(f) Private Nonprofit (PNP) Activities Claim: The written claim made by the PNP or the Intermediary PNP to the Secretary shall include:

CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS

- (1) applicant name,
- (2) description and location of essential community services activities provided with the associated costs,
- (3) if applicant is a PNP, a copy of the request for assistance,
- (4) if applicant is an Intermediary PNP, a copy of local agency agreement, with signatures of local agency representative and authorized agent.

(g) Private Nonprofit (PNP) Application: The written application made by the PNP or the Intermediary PNP to the Secretary which shall include:

- (1) contact information,
- (2) authorized agent contact information,
- (3) ~~(2)~~ tax exempt identification number,
- (4) ~~(3)~~ list of essential community services provided,
- (5) ~~(4)~~ signature of authorized agent.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

§ <sup>2992</sup>~~3010~~. General Provisions for Eligible Private Nonprofit (PNP) Activities

(a) The PNP or Intermediary PNP applicant must meet all eligibility requirements described in this section.

(b) When a state of emergency is proclaimed by the Governor, an eligible PNP or the Intermediary PNP applicant may receive state assistance pursuant to Government Code Section 8692. This emergency regulation applies to any emergency proclaimed by the Governor on or after December 21, 2010.

(c) An eligible PNP applicant may receive state financial assistance as reimbursement for the performance of essential community services provided such expenditures meet all of the eligibility requirements.

(d) An eligible Intermediary PNP applicant may receive state financial assistance as reimbursement for the coordination of multiple PNPs performing essential community services provided such expenditures meet all of the eligibility requirements.

(e) No PNP activities resulting from self-deployment will be eligible for reimbursement.

(f) No state financial assistance shall be made available for any activity that occurs more than six (6) months from the date of the Governor's Proclamation without prior written approval from the California Emergency Management Agency (Cal EMA).

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(g) An eligible PNP applicant shall utilize the application process as described in Section ~~3050~~. An eligible Intermediary PNP applicant shall utilize the application process as described in Section ~~3055~~.  
*RS/OPR* <sup>2999</sup><sub>2999</sub>

NOTE

Authority cited: Section 8692. Government Code. Reference: Section 8692. Government Code.

<sup>2993.</sup>  
*RS/OPR* § ~~3020~~. PNP Applicant Eligibility

(a) A PNP organization must meet all of the following criteria for eligibility to apply for state financial assistance:

(1) An eligible PNP applicant must meet the definition of PNP as defined in Section ~~3000~~(e).  
<sup>2991</sup><sub>2991</sub>

(2) An eligible PNP applicant must provide essential community services as defined in Section ~~3000~~(a).  
<sup>2991</sup><sub>2991</sub>

(b) A PNP organization is not eligible if it uses public funds for religious means as described in Government Code Section 8692(d) while providing emergency assistance activities.

NOTE

Authority cited: Section 8692. Government Code. Reference: Section 8692. Government Code.

<sup>2994.</sup>  
*RS/OPR* § ~~3025~~. Intermediary PNP Applicant Eligibility

(a) An Intermediary PNP organization must meet all of the following criteria for eligibility to apply for state financial assistance:

(1) An eligible Intermediary PNP applicant must meet the definition of an Intermediary PNP as defined in Section ~~3000~~(c).  
<sup>2991</sup><sub>2991</sub>

(2) An eligible Intermediary PNP applicant must be responsible for the coordination of multiple PNPs as described in a written agreement with the requesting local agency. The written agreement shall meet all of the following requirements:

(A) The written agreement shall contain a list of the PNPs performing essential community services that the Intermediary PNP is responsible for coordinating.

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(B) The written agreement shall describe the process the requesting local agency will utilize to request the Intermediary PNP to provide the coordination of essential community services performed by the listed PNPs.

(C) The written agreement shall be executed within 30 days of the date of the Governor's State of Emergency Proclamation issued in response to an emergency or disaster.

(D) This deadline for the execution of the written agreement may be extended by the Cal EMA Secretary only for unusual or extraordinary circumstances upon written request by the Intermediary PNP or requesting local agency.

(3) An eligible Intermediary PNP as an applicant requesting reimbursement on behalf of the PNPs they are responsible for coordinating, must have a written agreement with these PNPs. The written agreement shall meet all of the following requirements:

(A) A description of the process for the local agency to request the performance of essential community services by the listed PNPs through the Intermediary PNP.

(B) An authorization statement with signature that the Intermediary PNP will comply with the procedures and requirements described in the agreement.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

2995.  
ps/omw § ~~2930~~ 2995 PNP Activities Eligibility

(a) To be eligible for state financial assistance, the PNP activities must meet all the following criteria:

(1) Eligible activities must be requested by a local agency or the state and completed within a timeframe established by the requesting agency. A written agreement between an eligible PNP and the requesting local agency may replace such request if the agreement specifies the requirements of deployment and is executed prior to providing the essential community services.

(2) Eligible activities must relate directly to a state of emergency as proclaimed by the Governor and be in support of the community affected by the emergency or disaster.

(3) Consistent with Government Code Section 8692(d), eligible activities must comply with state and federal civil rights laws that prohibit discrimination, and the First Amendment to the United States Constitution with regard to the use of public funds for religious activities.

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(b) Hazard mitigation, repair or permanent restoration to facilities or real property damaged by an emergency or disaster are not eligible activities under this section.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

RS/DA 2996:  
§ ~~3033~~ 2997. Intermediary PNP Coordination Activities Eligibility

(a) To be eligible for state financial assistance, the Intermediary PNP coordination activities must meet all the following criteria:

(1) Eligible coordination activities must be requested by a local agency in accordance with a written agreement between the Intermediary PNP and the local agency.

(2) Eligible activities include the coordination of multiple PNPs listed in the written agreement in the performance of essential community services for the requesting local agency.

(3) Consistent with Government Code Section 8692(d), eligible activities must comply with state and federal civil rights laws that prohibit discrimination, and the First Amendment to the United States Constitution with regard to the use of public funds for religious activities.

(4) Eligible coordination activities must relate directly to a state of emergency as proclaimed by the Governor and be in support of the community affected by the emergency or disaster.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

2997:  
§ ~~3040~~ 2997. PNP Cost Eligibility

(a) Eligible activities must result in documented extraordinary costs.

(b) Reasonable equal value replacement costs for documented pre-event inventory provided to the community affected by the proclaimed emergency or disaster may be eligible for reimbursement if the inventory is necessary to the PNP's ability to provide the essential community services requested by the local agency or the state.

(c) PNP costs as described below are ineligible for state financial assistance.



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- (1) No state financial assistance will be provided for costs or expenditures prohibited by the federal or state constitution, federal or state law, or federal or state regulation.
- (2) No reimbursement will be provided for donated resources received by the PNP on or after the first day of the incident period as specified in the Governor's State of Emergency Proclamation for the emergency or disaster for which the PNP is seeking reimbursement by the state.
- (3) No reimbursement will be provided for donated or volunteer labor.
- (4) No reimbursement will be provided for vouchers, debit cards or other monetary relief provided to the community affected by an emergency or disaster.
- (5) No state financial assistance will be provided for damages caused by negligence or intentional acts.
- (6) No funds allocated shall be used to supplant state or federal funds otherwise available in the absence of state financial relief or assistance.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

*RS/OAL* 2998.  
~~§ 3045.~~ Intermediary PNP Cost Eligibility

- (a) Eligible coordination activities of multiple PNPs performing essential community services must result in documented extraordinary costs.
- (b) Intermediary PNP coordination costs as described below are ineligible for state financial assistance.
- (1) No state financial assistance will be provided for costs or expenditures prohibited by the federal or state constitution, federal or state law, or federal or state regulation.
- (2) No funds allocated shall be used to supplant state or federal funds otherwise available in the absence of state financial relief or assistance.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

*RS/OAL* 2999.  
~~§ 3050.~~ PNP Application Process

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(a) An eligible PNP applicant must submit to Cal EMA, a completed PNP application within 60 days after the date of a Governor's Proclamation.

(1) The Secretary or his/her designee may extend this deadline only for unusual or extraordinary circumstances.

(2) Prior to application approval by Cal EMA, an eligible PNP applicant shall also submit a resolution designating an authorized representative.

(b) An eligible PNP applicant must submit a PNP activities claim within 60 days of the completion of all eligible activities.

(1) After receipt of the PNP activities claim, Cal EMA may schedule an onsite review of supporting documentation.

(2) The state shall provide one hundred (100) percent of the total cost of eligible PNP activities.

(3) Upon approval of eligible costs, Cal EMA will process an allocation through the State Controller's Office. The state shall make no allocation less than one thousand dollars (\$1,000).

(4) If the state allocation is less than the total costs submitted on the activities claim, an eligible PNP applicant has the right to a fair hearing pursuant to Section ~~2060~~ <sup>2991.2</sup> RS/oral

(c) An eligible PNP applicant providing sustained operations may submit a PNP activities claim prior to the completion of all eligible activities providing the PNP can demonstrate financial hardship.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

<sup>2991.1</sup>  
~~§ 2060~~ **Intermediary PNP Application Process**

(a) An eligible Intermediary PNP applicant must submit to Cal EMA, a completed PNP application within 60 days after the date of a Governor's Proclamation.

(1) The Secretary or his/her designee may extend this deadline only for unusual or extraordinary circumstances.

(2) Prior to application approval by Cal EMA, an eligible Intermediary PNP applicant shall also submit a resolution designating an authorized representative.

(b) An eligible Intermediary PNP applicant must submit a PNP activities claim within 60 days of the completion of all eligible coordination activities.

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
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(c) The PNP activities claims form submitted by the Intermediary PNP may include the eligible costs for all of the PNPs listed in their agreement that provided essential community services for the local agency. The Intermediary PNP will be responsible for processing the reimbursement to those listed PNPs included on their PNP activities claim form.

(1) After receipt of the Intermediary PNP activities claim, Cal EMA may schedule an onsite review of supporting documentation.

(2) The state shall provide the Intermediary PNP one hundred (100) percent of the total eligible cost of the coordination activities and the total eligible cost paid by the Intermediary PNP to the PNPs they are responsible for coordinating.

(3) Upon approval of eligible costs, Cal EMA will process an allocation through the State Controller's Office. The state shall make no allocation less than one thousand dollars (\$1,000).

(4) If the state allocation is less than the total costs submitted on the activities claim, an eligible Intermediary PNP applicant has the right to a fair hearing pursuant to Section

~~3060.~~

2999.2.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

2999.2.

§ ~~3060~~. Fair Hearing Processes

(a) LEVEL ONE: The PNP or the Intermediary PNP shall submit a formal written description of the grievance with supporting documentation, to the Director of Statewide Operations (Director) of Cal EMA. The Director or his/her designee shall respond with a written decision within ten (10) working days from receipt. Should the PNP or the Intermediary PNP disagree with the decision, the PNP or the Intermediary PNP may appeal to the second level.

(b) LEVEL TWO: The PNP or the Intermediary PNP shall prepare a formal response disputing the decision made by the Director. The PNP or the Intermediary PNP response shall include the original description of the grievance with supporting documentation, together with a copy of the response from the Director. This response shall be sent to the Assistant Secretary of Prevention, Information Analysis and Operations (Assistant Secretary) of Cal EMA within thirty (30) working days from receipt of the decision of the Director. The Assistant Secretary or his/her designee shall issue a written decision to the PNP or the Intermediary PNP within sixty (60) working days of receipt of the PNP's or

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the Intermediary PNP's formal response. This written decision shall be deemed a final judgment for purposes of this fair hearing process.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

RS/OAL <sup>2999.3.</sup>  
§ ~~3070~~. Audit

The Secretary or his/her duly authorized representative shall conduct audits and investigations as necessary to ensure compliance with these regulations. State auditors, and the Secretary or his/her duly authorized representative, shall have the right to question any person, as appropriate and to access all financial and program records and supporting documentation pertinent to any activity funded under these regulations. The rights of access shall last for the full length of the retention period as required under these regulations.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

RS/OAL <sup>2999.4.</sup>  
§ ~~2080~~. Retention Requirements for Records

The PNP or the Intermediary PNP applicant shall retain all financial and program records and supporting documentation, reasonably considered as pertinent to these regulations for three years from the starting date of the retention period. The Secretary or his/her duly authorized representative will notify each PNP or the Intermediary PNP applicant of the starting date of the retention period.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.

RS/OAL <sup>2999.5.</sup>  
§ ~~3090~~. Original Source Documentation

Microfilm, microfiche, or other representations of original source documents may be accepted in lieu of original source documents, if the eligible PNP or the Intermediary

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PNP applicant provides to Cal EMA an independent or internal auditor's report attesting to the accuracy of the alternate forms of original source documents.

NOTE

Authority cited: Section 8692, Government Code. Reference: Section 8692, Government Code.